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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

Debtor.

Tax I.D. No. 94-3234914

Case Nos. 19 - ____ (____)
19 - ____ (____)

Chapter 11

**MOTION OF DEBTORS FOR ENTRY OF
ORDER PURSUANT TO 11 U.S.C. §§ 546(c)
AND 105(a) AND FED. R. BANKR. P. 9019
ESTABLISHING AND IMPLEMENTING
EXCLUSIVE AND GLOBAL
PROCEDURES FOR THE TREATMENT
OF RECLAMATION CLAIMS**

In re:

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtor.

Tax I.D. No. 94-0742640

Date:
Time:
Place:

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as
2 debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned
3 chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the “**Motion**”), pursuant to
4 sections 546(c) and 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule
5 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), establishing procedures
6 for the treatment of all claims that may be asserted against the Debtors seeking the reclamation of Goods
7 (as defined below) pursuant to section 546(c) of the Bankruptcy Code (the “**Reclamation Claims**”) and
8 prohibiting any Seller (as defined below) from taking any other remedial action with respect to its Goods,
9 including any other effort to reclaim the same.

10 A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A**
11 (the “**Proposed Order**”).
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MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in either of the Chapter 11 Cases.

Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in the Declaration of Jason P. Wells, Senior Vice President and Chief Financial Officer of PG&E Corp., filed contemporaneously herewith in support of the Debtors’ chapter 11 petitions and related first day relief (the “**Wells Declaration**”).

III. NEED FOR RELIEF

As a result of the commencement of these Chapter 11 Cases, the Debtors have received, and expect to continue to receive, Reclamation Claims from various parties (collectively, the “**Sellers**”) that, in the ordinary course of business, sold and delivered a variety of raw materials, equipment, specially fabricated repair and replacement parts, supplies, and other goods (collectively, the “**Goods**”) to the Debtors prior to the Petition Date, but for which the Debtors have not yet been invoiced or made payment to the Seller in full.

The Debtors operate an electric and natural gas utility that requires daily purchases of Goods, including Goods provided by various Sellers in the days and weeks leading up to the Petition Date. To avoid potentially extensive piecemeal litigation that would interfere with the orderly administration of these Chapter 11 Cases, the Debtors seek to establish the Reclamation Procedures for the reconciliation

and allowance of Reclamation Claims. The Debtors submit that the Reclamation Procedures will effectively and efficiently streamline the process of resolving any potential Reclamation Claims for the benefit of the Debtors and all other parties in interest.

IV. PROPOSED RECLAMATION PROCEDURES

The Debtors propose the following procedures (the “**Reclamation Procedures**”) for processing and reconciling Reclamation Claims:

- a. any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements entitling it to have a right to reclamation under section 546(c) of the Bankruptcy Code;
- b. any Seller asserting a Reclamation Claim must submit a written demand asserting such Reclamation Claim (a “**Reclamation Demand**”), which must include, to the extent such information is already available or known to such Seller, (i) a description of the Goods subject to the Reclamation Demand; (ii) copies of any purchasing orders, invoices, receipts, bills of lading and the like, identifying the particular Goods for which the Reclamation Demand is being asserted; (iii) any evidence regarding the date(s) such Goods were shipped to and received by the Debtors and the alleged value of such Goods; and (iv) a statement indicating whether the Seller has filed or intends to file any other claim against the Debtors regarding the Goods underlying its Reclamation Demand (collectively, the “**Reclamation Demand Requirements**”);
- c. all Reclamation Demands must be submitted to the Debtors’ proposed claims and noticing agent, Prime Clerk LLC (“**Prime Clerk**”), by the applicable deadline set forth below, either by mail or hand delivery at PG&E Corporation Reclamations Demands, c/o Prime Clerk LLC, 850 3rd Avenue, Suite 412, Brooklyn, New York 11232, and not filed on the Court docket;
- d. to the extent that any Seller asserted a Reclamation Demand prior to entry of the Proposed Order granting the relief requested herein that complied with the procedures and timing requirements of section 546(c) of the Bankruptcy Code, but otherwise did not meet the Reclamation Demand Requirements, such Seller shall have twenty (20) days from the date of entry of the Proposed Order to submit to the Debtors (via Prime Clerk as set forth in (c) above) the supplemental information or evidence required to meet the Reclamation Demand Requirements;
- e. unless a Seller has already submitted a Reclamation Demand to the Debtors within the forty-five (45) days prior to the Petition Date, any Seller asserting a Reclamation Claim must have submitted a Reclamation Demand (subject to the Seller’s right to supplement the Reclamation Demand as set forth in (d) above to meet the Reclamation Demand Requirements) so that it was received by the Debtors (via Prime Clerk as set forth in (c) above) on or before twenty (20) days after the Petition Date (the “**Reclamation Deadline**”);
- f. upon entry of the Proposed Order, the Debtors will serve upon all Sellers who have submitted a Reclamation Demand by the Reclamation Deadline a copy of such order at the address indicated in its Reclamation Demand;
- g. no later than 120 days after entry of the Proposed Order (the “**Reclamation Notice Deadline**”), the Debtors will file with the Court a notice (the “**Reclamation Notice**”) listing the timely submitted Reclamation Claims and the amounts (if any) and proposed

status and treatment of each such Reclamation Claim that the Debtors determine to be valid. The Debtors will serve the Reclamation Notice on (i) the United States Trustee for Region 17; (ii) the attorneys for any statutory committees appointed in these Chapter 11 Cases; (iii) counsel to the agent(s) under the Debtors' proposed debtor-in-possession financing facilities; and (iv) each Seller listed in the Reclamation Notice, at the address indicated in the respective Seller's Reclamation Demand (collectively, the "**Notice Parties**");

- h. if the Debtors fail to file the Reclamation Notice by the Reclamation Notice Deadline, any holder of a Reclamation Claim that submitted a timely Reclamation Demand in accordance with the Reclamation Procedures may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim;
- i. any party that wishes to object to the Reclamation Notice must file and serve an objection (a "**Reclamation Notice Objection**") on the Notice Parties, so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the twentieth (20th) day after the date on which the Reclamation Notice is filed (the "**Objection Deadline**"). Any Reclamation Notice Objection must include (i) a copy of the Reclamation Demand, with evidence of the date mailed to the Debtors; and (ii) a statement describing with specificity the objections to the Reclamation Notice and any legal and factual bases for such objections;
- j. any Reclamation Claim listed in the Reclamation Notice for which no Reclamation Notice Objection is filed and served by the Objection Deadline shall be deemed allowed by the Court in the amount identified by the Debtors in the Reclamation Notice, *provided* that all issues relating to the treatment of any such allowed Reclamation Claim under a chapter 11 plan for the Debtors shall be reserved;
- k. notwithstanding and without limiting the foregoing, the Debtors will be authorized, but not required, to negotiate, with any Seller to seek an agreement resolving the Seller's Reclamation Claim. If no agreement is reached resolving the Reclamation Notice Objection, the Debtors or the Sellers may file a motion with the Court requesting a hearing with respect to the Reclamation Notice Objection. If the Debtors and a Seller agree on the validity, amount, or treatment of the Seller's Reclamation Claim, the Debtors will file with the Court a notice of settlement (a "**Settlement Notice**") and serve such Settlement Notice on the Notice Parties. Each Notice Party will have ten (10) days from the date of service of such Settlement Notice to file with the Court and serve on the other Notice Parties and attorneys for the Debtors an objection thereto (a "**Settlement Objection**");
- l. if no Settlement Objection is timely filed and served, such Reclamation Claim will be treated in accordance with the Settlement Notice without further order of the Court;
- m. if a Settlement Objection is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "**Settlement Stipulation**"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court;
- n. if no consensual resolution of a Settlement Objection is reached, the Debtors may file a motion with the Court requesting a hearing with respect to the Settlement Notice;
- o. if a Seller receives payment on account of the Seller's prepetition claims pursuant to any other motion that has been or may be filed by the Debtors, including, without limitation, (i) the Debtors' motion seeking authorization to establish procedures for asserting claims arising under section 503(b)(9) of the Bankruptcy Code; and (ii) the Debtors' motion seeking authorization to pay prepetition claims of certain safety and reliability, outage and nuclear facility suppliers, to the extent a Seller receives payment on account of its

prepetition claim pursuant to an order approving any of such motions, the Reclamation Procedures shall not apply to such Seller to the extent of any such payment; and

- p. all Sellers shall be forever barred, without further order of the Court, from asserting a Reclamation Demand after the expiration of the Reclamation Deadline, but shall not be barred from asserting, subject to applicable deadlines, related or unrelated general unsecured claims or administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code.

The Debtors propose that the Reclamation Procedures shall be the sole and exclusive method for addressing and resolving Reclamation Claims. As a result, the Debtors request that all Sellers be prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including, without limitation, the following: (a) commencing adversary proceedings or contested matters in connection with any Reclamation Claim, (b) seeking to obtain possession of any Goods except as may be permitted by the Reclamation Procedures, or (c) interfering with the delivery of any Goods to the Debtors or the retention of any Goods by the Debtors. The Reclamation Procedures will effectively and efficiently streamline the process of resolving the Reclamation Claims for the Debtors and the Sellers alike, without impacting the parties' substantive rights to pursue or contest the Reclamation Claims.

V. BASIS FOR RELIEF REQUESTED

Upon the commencement of a chapter 11 case, reclamation rights are governed by section 546(c) of the Bankruptcy Code, which provides, in relevant part:

[S]ubject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the [debtor in possession] are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such a seller may not reclaim such goods unless such seller demands in writing reclamation of such goods

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

11 U.S.C. § 546(c)(1).

In addition, pursuant to Bankruptcy Rule 9019(a), after notice and a hearing, the Court may approve a compromise or settlement between the Debtors and any Seller who files a Reclamation Demand and/or Reclamation Notice Objection. Fed. R. Bankr. P. 9019(a). Allowing the Debtors to

1 negotiate with Sellers will expedite the resolution of Reclamation Claims and promote the efficient
2 administration of these Chapter 11 Cases.

3 Furthermore, section 105(a) of the Bankruptcy Code provides that the Court “may issue any
4 order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy
5 Code. 11 U.S.C. § 105(a). The Debtors submit that establishing and implementing the Reclamation
6 Procedures is necessary and appropriate and that the Reclamation Procedures are consistent with section
7 546(c) of the Bankruptcy Code and Bankruptcy Rule 9019.

8 The Debtors believe that the Reclamation Procedures will assist in the consensual resolution of
9 such claims in an economic and efficient manner. Moreover, the Reclamation Procedures will minimize
10 costly and distracting litigation, particularly at the early stages of these Chapter 11 Cases, and enable the
11 Debtors to focus their resources and energies on administering these Chapter 11 Cases and overseeing
12 the Debtors’ operations. Therefore, the relief requested in this Motion is in the best interests of the
13 Debtors and their estates and should be granted.

14 **VI. NOTICE**

15 Notice of this Motion will be provided to (i) the Office of the United States Trustee for Region
16 17 (Attn: James L. Snyder, Esq. and Timothy Laffredi, Esq.); (ii) the Debtors’ fifty (50) largest unsecured
17 creditors on a consolidated basis; (iii) the Securities and Exchange Commission; (iv) the Internal
18 Revenue Service; (v) the Office of the California Attorney General; (vi) the California Public Utilities
19 Commission; (vii) the Nuclear Regulatory Commission; (viii) the Federal Energy Regulatory
20 Commission; (ix) the Office of the United States Attorney for the Northern District of California; (x)
21 counsel for the agent under the Debtors’ proposed debtor in possession financing facilities; and (xi) those
22 persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to
23 Bankruptcy Rule 2002. Based on the urgency of the circumstances surrounding this Motion and the
24 nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

25 No previous request for the relief sought herein has been made by the Debtors to this or any other
26 court.
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WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 29, 2019

WEIL, GOTSHAL & MANGES LLP

KELLER & BENVENUTTI LLP

By: /s/ Tobias S. Keller
Tobias S. Keller

*Proposed Attorneys for Debtors
and Debtors in Possession*